THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL NO : 253 of 2000

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 18.11.1999 in WP NO : 23048 OF 1999 on the file of the High Court.)

25-07-2005

Between:

1. The APSRTC, rep. by its Regional Manager, Visakhapatnam.

And another

..... APPELLANTS

AND

1. Sri B.H..K. Rao and another

.....RESPONDENTS

The Court made the following :

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THE HON'BLE MRS JUSTICE T.MEENA KUMARI

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JUDGMENT (per Hon'ble Smt Justice T. Meena Kumari):

The present writ appeal is filed by the respondents-Corporation aggrieved

against the orders passed by the learned Single Judge of this Court in WP No. 23048 of 1999 dated 18.11.1999, with regard to the directions issued to reinstate the writ petitioner, within a period of two months from the date of receipt of the order and with continuity of service, but without back wages.

The appellants herein are the respondents 2 & 3 and the first respondent herein is the petitioner in the above writ petition.

The brief facts of the case that led to filing of the writ appeal are as follows;-

The first respondent was appointed as a conductor in the appellants-Corporation on 22-10-1984 and while he was in service, on 17.8.1995 check was conducted and the first respondent was charge sheeted for the misconduct of cash and ticket irregularity of a sum of Rs.5.00, and was subjected to an inquiry. Basing on the enquiry report, he was removed from service through the impugned order dt.4-12-1995. Challenging the said order, the first respondent approached the Labour Court and the Labour Court, after considering the rival contentions and the material placed before it, reached to a conclusion that the enquiry conducted by the Enquiry Officer is fair and proper, declined to interfere with the impugned order and confirmed the same. Aggrieved by the said findings of the Labour Court, the workman-first respondent herein filed the above writ petition. The Corporation contested the above writ petition.

The learned Single Judge of this Court, having relied upon the case law reported in Colour-Chem Ltd., v., A.I.Alaspurkar (1998(1)SLR, 757) and having found that even assuming that the alleged misconduct of cash and ticket irregularities involving a sum of Rs.5.00 is proved, still the punishment of removal from service is shockingly disproportionate to the offence, directed the appellants-Corporation to reinstate the first respondent within a period of two months from the date of receipt of its order with consequential benefits of continuity of service but without back wages. Aggrieved by the said directions, the Corporation preferred the present writ appeal.

Heard the learned Counsel on either side.

Learned Standing Counsel appearing on behalf of the appellants-Corporation submits that it is not the first offence of the first respondent and

previously also the workman was suspended for 7 times for his misconduct of cash and ticket irregularities and his increments were deferred for 2 times and as he was in the habit of involving in cash and ticket irregularities, the order of termination of his services is justified by the award and that Labour Court also having found that the enquiry held is just and fair, upheld the termination. Learned Counsel further submits that the learned Single Judge ought not have interfered with the Nil award passed by the Labour Court on the ground that the punishment imposed is shockingly disproportionate to the alleged offence of cash and ticket irregularity and he ought to have confirmed the award.

On the other hand, the learned counsel appearing on behalf of the first respondent-workman in toto supported the findings of the learned Single Judge.

We have heard the learned Counsel on either side and perused the order under challenge including the other material available on record. We are in complete agreement with the contention raised by the learned Standing Counsel appearing on behalf of the appellant that the first respondent-workman was in the habit of involving in cash and ticket irregularities and he was suspended for 7 times and his increments were deferred for 2 times. But the learned Single Judge has granted the relief of reinstatement without back wages and with continuity of service with all the benefits. From the material available on record, it has to be observed that no interim stay or interim suspension of the order of the learned single Judge was granted and on the other hand the appellants-Corporation acted upon the directions in the order.

Under the above circumstances and in view of the above observations that the petitioner is habituated in involving cash and ticket irregularities, while confirming the orders of reinstatement of the first respondent-workman, we deem it proper to modify the order of the learned single Judge to the effect that the reinstatement of the first respondent with continuity of service is without back wages and is only for the purpose of calculation of pension. We also make it clear that there shall be continuity of service of the first respondent that should be counted only for the purpose of pension at the time of his retirement.

With the aforesaid modification, the writ appeal is allowed. No costs.

(T. MEENA KUMARI, J)

Dt. 25-7-2005

(P. LAKSHAMANA REDDY, J)

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THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

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WRIT APPEAL NO : 253 of 2000

(Judgment of the Division Bench delivered by

Hon'ble Smt Justice T Meena Kumari)

25th July 2005